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No. 07-10374

In the Supreme Court of the United States

KEITH HAYWOOD,
Petitioner,
v.
CURTIS DROWN, ET AL.
Respondents.

On Writ of Certiorari
To the New York Court of Appeals

BRIEF *AMICUS CURIAE* OF PRISONERS' LEGAL SERVICES OF NEW YORK, PRISONERS RIGHTS PROJECT, NEW YORK STATE DEFENDERS ASSOCIATION, CENTER FOR COMMUNITY ALTERNATIVES, PRISON LEGAL NEWS, UPTOWN PEOPLE'S LAW CENTER, JEROME N. FRANK, LEGAL SERVICES ORGANIZATION OF YALE LAW SCHOOL, AND CIVIL RIGHTS CLINIC OF NEW YORK UNIVERSITY SCHOOL OF LAW IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Prisoners' Legal Services of New York (PLS), a not-for-profit organization providing civil legal services to indigent inmates in New York State prisons, has been providing legal assistance to inmates for thirty-two years. PLS receives over 10,000 requests for assistance annually and serves as legal counsel to inmates on a variety of claims in the state and federal courts, including claims of excessive force, deliberate indifference and violations of due process. There are approximately 62,000 individuals in New York State prisons. PLS has a significant interest in ensuring that they have the same opportunity as other individuals in New York State to have their claims of constitutional wrongs adjudicated by the state courts.

The Legal Aid Society, a private, non-profit organization, has provided free legal assistance to indigent persons in New York City for over 125 years. Through its Prisoners' Rights Project, the Society seeks to ensure that prisoners' legal rights are fully protected. The Society advocates on behalf of prisoners in New York state prisons and New York City jails, and where necessary, conducts class

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[1] The parties' letter of consent to the filing of this brief has been lodged with the Clerk. Under Rule 37.6 of the Rules of the Court, *amicus curiae* states that no counsel for a party has written this brief in whole or in part and that no person or entity, other than *amicus curiae*, has made a monetary contribution to the preparation and submission of the brief.

action litigation relating to prison conditions and mistreatment of, and violence against, prisoners.

The New York State Defenders Association (NYSDA) is a not-for-profit membership association of more than 1,500 public defenders, legal aid attorneys, 18-B counsel, private practitioners and others throughout the state. NYSDA operates the Public Defense Backup Center, offering legal consultation, research, and training to more than 5,000 lawyers who serve as public defense counsel in criminal cases in New York. Many of the clients of the public defense attorneys that are supported by NYSDA have been sentenced to incarceration in state prison. These individuals should have recourse to litigate federal civil rights claims in state Supreme Court when they have been victimized in prison.

Claudia Angelos is Professor of Clinical Law at New York University School of Law and Director of the law school's Civil Rights Clinic. Together with students who act as attorneys under her supervision, she has litigated dozens of civil rights cases involving misconduct by New York State correction officers. She teaches in the area of prisoners' rights.

The Center for Community Alternatives ("CCA") is a private, non-for-profit organization that promotes reintegrative justice and a reduced reliance on incarceration through advocacy, services, and public policy development in the pursuit of civil and human rights. Many CCA clients are facing

potential prison sentences, have been imprisoned, or are currently incarcerated in New York State prisons. Much of CCA's work focuses on helping individuals successfully reintegrate into the community after incarceration, and there is no question that the conditions of an individual's confinement are a factor that informs the individual's ability to successfully reintegrate. As an organization that works with those who have been incarcerated, CCA has an interest in ensuring that such individuals have a full opportunity to vindicate – in state or federal court – any violations of their civil rights that occurred while in prison.

The Uptown People's Law Center ("UPLC") is a not-for-profit legal services center serving poor and working people in Chicago, Illinois. In addition to its legal work for community residents, UPLC represents prisoners in challenges to prison conditions, the parole system, and a variety of other matters. UPLC receives over 5,000 requests for representation every year, and has one of the largest dockets of prison cases in Illinois. UPLC files cases, and provides advice to prisoners litigating their own cases, in both federal and state courts. UPLC has a vital interest in ensuring that state courts remain available to prisoners seeking to challenge the unlawful conduct of prison officials.

At the Jerome N. Frank Legal Services Organization of the Yale Law School (LSO), law students supervised by law school faculty provide free representation to indigent people in need of

legal aid. Since 1970, LSO students have provided legal assistance to persons incarcerated in state and federal prisons in Connecticut and occasionally in New York. Yale students have represented inmates in federal and state courts and before administrative agencies, in a range of proceedings including habeas and civil rights actions. The outcome of this case will potentially affect the remedies available to all inmates who seek help in the future from LSO.

Prison Legal News ("PLN") is a non-profit, charitable corporation that publishes a nationally distributed monthly journal of the same name that reports on news, recent court decisions, and other developments relating to the civil and human rights of prisoners in the United States and abroad. *PLN* has approximately 6,800 subscribers in all fifty states and abroad and eight times as many readers. PLN also advocates that prisoner victims of civil rights violations be able to vindicate their human and civil rights in the civil justice system.

Each of the amici represents or advocates on behalf of prisoners who have been victims of civil rights violations and seek relief in state courts. All share a concern that upholding the *Haywood* decision will result in a continued curtailment of the civil rights of New York state prisoners and the likelihood that New York and other states will enact similar statutes to limit the ability of other civil rights victims across the county to obtain redress for deprivations of their constitutional rights.

SUMMARY OF THE ARGUMENT

The Civil Rights Act of 1871, now known as 42 U.S.C. §1983, (hereinafter §1983), was enacted "to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992), *citing Carey v. Piphus*, 435 U.S. 247, 254-257 (1978). Though it was prompted by the abuses suffered by former slaves at the hands of many persons, including law enforcement officials, the statute was framed in the most general terms, protecting any person in the United States against deprivation of federal rights by any person acting under color of state law.

The Supremacy Clause of Article VI of the Constitution mandates that state courts are bound by the laws of the United States. States have concurrent jurisdiction over §1983 claims. Where a state creates courts of general jurisdiction that are competent to hear and decide state claims similar to those claims that arise under §1983, the state courts cannot refuse to exercise jurisdiction over the federal §1983 claims unless the state has a neutral and valid reason for doing so. There have only been three circumstances in which state courts have been allowed to refuse to exercise jurisdiction over federal causes of action. None of those

circumstances, or any circumstances that are even remotely analogous, are present in this case.

Every state in the United States, including New York, exercises jurisdiction over §1983 actions. Steven H. Steinglass, *Section 1983 Litigation in State Courts*, Appendix E (Thomson West 2007). New York however, creates an exception for §1983 actions brought by individual civil rights victims who have been subjected to abuses by employees of the New York State Department of Correctional Services (DOCS). New York State's Correction Law §24 prohibits this subcategory of civil rights victims from seeking damages in state court for wrongs done to them by DOCS employees, contrary to § 1983's plain command that "[*e]very* person" who violates federal rights under color of state law shall be held liable in an action at law or otherwise.

The defendants assert that Correction Law §24 is a neutral jurisdictional rule supported by a valid state interest, to wit: "[T]o ensure that corrections employees, when acting within the scope of their employment, are not inhibited in performing their difficult duties by the threat of voluminous, vexatious and often meritless prisoner suits against them for damages." Defendants' Court of Appeals Brief pp. 11-12. The New York State Court of Appeals (Court of Appeals), with three of seven justices dissenting, found this proffered reason represented a valid state interest and upheld the constitutionality of Correction Law §24.

The defendants' rationale is inconsistent with Supremacy Clause considerations. In enacting §1983, Congress was clearly aware that the law would allow those who had been victimized an opportunity to vindicate their rights in court. In passing §1983, Congress determined that the importance of providing a mechanism for civil rights victims, including any person deprived of a federal right, to seek redress against any person acting under color of state law, outweighed any possible negative impact that such a law might have on any category of defendants. This Court has stated many times that states may not refuse to follow federal law because they disagree with it. Immunizing a class of §1983 defendants from suit in a state's courts is precisely the kind of "end run" around federal law that the Supremacy Clause prohibits.

Correction Law §24 discriminates against the litigation of a federal claim in state court. New York courts have jurisdiction over similar type*s* of state and federal claims against similarly situated individuals and therefore have adequate and appropriate jurisdiction to decide §1983 claims against prison employees.

Correction Law §24 is not a neutral rule of judicial administration because it favors one class of New York citizens, DOCS employees, over another, all other citizens. Although this Court has never held that states *must* entertain 42 U.S.C. §1983 actions, and it need not decide that issue here, it has held that allowing states to pick and choose

which state actors should be subject to §1983 liability effectively undermines the very purpose for which the statute was enacted. *Howlett v. Rose,* 496 U.S. 356, 372 (1990).

Correction Law §24 is illogical in that its actual effect does not square with its rationale. As a matter of logic, DOCS employees can be, and often are, named as defendants in §1983 actions in federal court. DOCS employees are no more inhibited from performing their duties by the threat of a state court §1983 than by one filed in federal court. Thus, excluding civil rights actions against DOCS employees from state court does not prevent the supposed harm identified by the state. Moreover, legislation such as the Prison Litigation Reform Act of 1995 (PLRA), and Civil Practice Laws and Rules 1101(f)—both passed to restrict and discourage meritless litigation by prisoners—has significantly reduced the number of filings of prisoner lawsuits across the country and in New York without contravening federal statutory rights.

Correction Law §24 impermissibly burdens a federal right by prohibiting the litigation of §1983 damage claims in state courts against a select group of state employees, creating procedural hurdles for victims of civil rights violations by DOCS personnel that are not present for other civil rights victims, denying those victims a choice of forum and, in some cases, denying those victims access to the courts. Correction Law §24 also burdens a federal right by denying a subcategory of civil rights victims in New

York State the same benefits provided other civil rights victims who chose to litigate their §1983 claims in state court such as the right to a jury trial, the right to a compensatory damage award against the offending individual, the right to punitive damages and the right to attorneys fees.

Correction Law §24 undermines firmly established principles of federalism. If the lower court's decision is upheld it will pave the way for New York State and other states to deprive other unpopular groups of their right to pursue civil rights claims in state courts, thereby 1) shifting the burden of entertaining such claims to the federal courts, 2) excluding state courts from their proper role in adjudicating federal constitutional law issues, and 3) depriving certain civil rights victims of the opportunity to litigate their claims before local judges and juries.

Correction Law §24 is not a jurisdiction limiting statute but an immunity granting statute. This immunity extends to all DOCS employees, whether the plaintiff is a prisoner alleging that prison officials were deliberately indifferent to serious medical needs, a DOCS employee alleging that his supervisor discriminated against him, or a citizen alleging that he was subject to an unreasonable search and seizure during a prison visit. While the state Court of Claims is available to prisoners seeking compensation for state tort violations, that court does *not* have jurisdiction over individual prison employees, does *not* have

jurisdiction to award damages against prison employees, does *not* have the ability to award punitive damages, does *not* allow the claimant a jury trial, and does *not* have jurisdiction over claims alleging violations of federal constitutional rights. Correction Law §24 thus effectively grants prison employees absolute immunity from suits for damages in *any* state court in New York.

Just as in *Howlett*, whether Correction Law §24 is viewed as a pre-emptive immunity granting statute or, as asserted by defendants, an attempt to limit the state courts' jurisdiction, New York's refusal to entertain one discrete category of §1983 claims, when state courts hear similar state-law actions and similar federal actions, violates the Supremacy Clause. *Howlett*, 496 U.S. at 375.

APPLICABLE STATUTES AND LAW

Forty-two U.S.C. §1983 provides a remedy for individuals who have been deprived of their civil rights by persons acting under color of state law. *Monell v. Department of Social Services of City of New York,* 436 U.S. 658 (1978). It states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to

> the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Article VI, clause 2 of the Constitution, the Supremacy Clause, states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

New York Correction Law §24 provides in pertinent part that:

> 1. No civil action shall be brought in any court of the state . . . against any officer or employee of [DOCS], in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the

discharge of the duties by such officer or employee.

2. Any [such] claim . . . shall be brought and maintained in the court of claims as a claim against the state.

ARGUMENT

I. CORRECTION LAW §24, AS APPLIED TO ACTIONS UNDER 42 U.S.C. §1983, VIOLATES THE SUPREMACY CLAUSE BECAUSE IT CONTRAVENES THE PLAIN LANGUAGE OF THE STATUTE.

*New York State Supreme Courts are cour*ts of general jurisdiction and therefore have jurisdiction over federal law claims in general and §1983 claims in particular. *Kagen v. Kagen*, 21 N.Y.2d 532 (1968). *See also Howlett v. Rose,* 496 U.S. 356 (1990), *citing Claflin*, 93 U.S. 130, 136-137; *Maine v. Thiboutot*, 448 U.S. 1 (1980)*; Martinez v. State of California*, 444 U.S. 277 (1980). When a state court entertains a federal law claim, it must entertain the whole of the relevant federal law; it cannot pick and choose among aspects of federal law, or substitute state policies that are inconsistent with the relevant federal policies. *See Felder v. Casey*, 487 U.S. 131 (1988). *See also Howlett v. Rose,* 496 U.S. 356 (1990). Thus, in *Felder,* this Court held that applying a state law notice of claim requirement to a §1983 claim violated the Supremacy Clause because there is no

such requirement in §1983 itself. *Id.,* 487 U.S. at 131. Indeed, this Court has generally refused to uphold state administrative or purported jurisdictional bars to §1983 filings where the policy underlying the state law requirement was contrary to that of §1983. *See Felder,* 487 U.S. 131. *See also Martinez*, 444 U.S. 277; *Howlett,* 496 U.S. 356; *Mondou v. New York, N.H & H.R. Co.,* 223 U.S. 1 (1912); *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 234 (1934); *Testa v. Katz*, 330 U.S. 386, 394 (1947).

In *Martinez,* in the context of discussing recognized federal defenses to a §1983 action, the Court held that a state law immunity could not be applied to protect defendants who might well have been liable under § 1983 in the context of the recognized federal defenses to a § 1983 action. *Martinez,* 444 U.S. at 283. In *Howlett,* the Court held that the state's refusal to allow plaintiffs to bring §1983 suits against an entity that was, pursuant to §1983, a proper defendant, violated the Supremacy Clause. *Howlett*, 496 U.S. at 375.

The result can be no different in this case. Section 1983 unequivocally imposes liability on "*[e]very* person" who subjects another to a violation of federal rights under color of state law. Section 1983 does not exempt prison employees, and to the extent that there are reasons prison employees might appropriately be excused from liability in some cases, those reasons are addressed in the suite of *federal* immunities and other defenses recognized

by this Court. When a state court with jurisdiction over §1983 claims fails to effectuate that federal statute—here, by extending liability only to "some persons" and not "every person" acting under color of state law—it directly contravenes federal law. For that reason, Correction Law §24, as applied by the court below, cannot stand.

II. CORRECTION LAW §24 AS APPLIED TO ACTIONS UNDER 42 U.S.C. §1983 IS NOT SUPPORTED BY A VALID EXCUSE OR NEUTRAL REASON.

As noted above, in New York State the Supreme Courts are courts of general jurisdiction, and that jurisdiction is "original, unlimited and unqualified." *Kagen*, 21 N.Y.2d at 537 (internal citations omitted.) Indeed, the jurisdiction and purpose of New York's Supreme Courts is so comprehensive that it encompasses every conceivable cause of action. *People v. Luce*, 204 N.Y. 478, 487-88 (1912).[2] Despite this, state courts may sometimes decline to take jurisdiction of federal claims based on a valid excuse or neutral reason. *Howlett*, 496 U.S. at 372, 381.

This Court has rejected Supremacy Clause challenges to state court rules limiting jurisdiction over federal claims only in limited situations. State

[2] *McKinney's Const.,* Article VI, §7.

policies pertaining to *forum non conveniens*, the jurisdiction of state courts of limited jurisdiction, and access to state courts by nonresidents provide the only three instances in which this Court has found that the state had a valid excuse or neutral rationale for refusing to hear a federal cause of action. *Howlett*, 496 U.S. at 381. No such neutral reason has been asserted by the defendants as their rationale for the enactment of Correction Law §24**.** This Court's case law confirms that there is no valid excuse or neutral reason justifying New York's exclusion from its courts of §1983 actions against a particular category of defendants.

Here, the defendants assert that Correction Law §24 is a proper subject matter limitation on the jurisdiction of the state Supreme Courts. Merely labeling a rule jurisdictional does not divest a state of its obligation to enforce federal law. *Testa v. Katz*, 330 U.S. 386, 394 (1947). In order not to offend the Supremacy Clause, the rule must address "concerns of power over the person and competence over the subject matter." *Howlett,* 496 U.S. at 381. Neither of these concerns is implicated by Correction Law §24. There is no question that state courts can exercise power over state employees, and there is no issue of competence since the state courts do entertain §1983 claims against DOCS employees for injunctive relief, and also routinely engage in judicial review of

disciplinary and other administrative actions by prison administrators.[3]

This Court has examined a number of statutes that states have argued were valid restrictions on the jurisdiction of the state courts. Repeatedly, this Court has rejected the reasons proffered by the state for refusing jurisdiction.

In *Mondou v. New York, N.H & H.R. Co.,* 223 U.S. 1 (1912), the state of Connecticut refused to hear Federal Employees Liability Act (FELA) actions because it believed that the Act was "not in accord with the policy of the State," and that applying federal law was "inconvenient and confusing." Rejecting Connecticut's rationale, this Court found that a state's disagreement with Congressional policy is an insufficient reason to refuse jurisdiction

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[3] *See Matter of Council 82, AFSCME, AFL-CIO on Behalf of Montgomery v. New York State Department of Correctional Services*, 223 A.D.2d 993 (3d Dep't 1996) (Court refused to vacate arbitration award against correction officer on charges of excessive force); *Vega v. Department of Correctional Services*, 186 A.D.2d 340 (3d Dep't 1992) (Court found DOCS was authorized to discharge former female corrections officer based on her covert and unauthorized conduct in developing close relationship with her future husband while he was inmate and parolee.); *Lucas v. Scully*, 71 N.Y.2d 399 (1988) (Court found DOCS regulations did not unconstitutionally abridged inmates right of freedom of expression); *Matter of Williams v. Coughlin*, 145 A.D.2d 771 (1988) (Court found the constitutional right to call witnesses at a disciplinary hearing can not be waived unless it is shown that the inmate was informed of the existence of that right).

over a federal cause of action. *Mondou,* 223 U.S. at 55-56. Where the relevant state court is one of general jurisdiction and has the ability to hear and resolve similar type claims between similarly situated parties, the state court is required to exercise jurisdiction over the federal action. *Id.* s*ee also Howlett*, 496 U.S. at 357.

Nor does refusing jurisdiction solely upon the "source of law" constitute a valid excuse or a neutral reason. *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 234 (1934) In *McKnett*, an Alabama state court refused to hear a FELA action because it held that a state statute giving Alabama state courts jurisdiction over suits arising under the laws of another state could not be extended to include causes of action arising in other states under federal law. *Id.* The Court stated: "While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so solely because the suit is brought under a federal law." The *McKnett* Court held that Alabama's policy "constituted discrimination against rights arising under Federal Law," *Howlett,* 496 U.S. at 373, *citing McKnett,* 292 U.S. at 234, because Alabama courts, as courts of general jurisdiction, had jurisdiction over similar types of actions involving similarly situated litigants.

Finally, when Rhode Island refused to exercise jurisdiction over a case involving the federal

Emergency Price Control Act, because it deemed the statute penal in nature, this Court once again found that since Rhode Island courts enforced the "same type of claim" under state law and similar types of claims under other Federal statutes, they had adequate and appropriate jurisdiction to adjudicate the federal claim. *Testa v. Katz*, 330 U.S. 386, 394 (1947).

A. Defendants' Excuse is Not Valid.

i. *New York State Enacted Correction Law §24 Because It Disagreed With Congress.*

Correction Law §24 should be struck down because defendants have failed to set forth either a "valid excuse" or a neutral rule of judicial administration for refusing to hear this subset of §1983 cases. *Howlett,* 496 U.S. at 380. Defendants assert that Correction Law §24 was enacted to prevent corrections officers from being subjected to vexatious, frivolous or voluminous law suits. That is, as in *Mondou*, defendants disagree with the availability of certain damage awards under federal law. In *Mondou*, the Court held that states cannot decline to enforce federal law because they consider it out of line with state policies. 223 U.S. at 55-56. Here, the application of *Mondou's* reasoning to the defendants' rationale leads to the same result.

In commenting on the Florida rule at issue in *Howlett* this Court stated: "To the extent that the Florida rule is based upon the judgment that parties who are otherwise subject to the jurisdiction of the court should not be held liable for activity that would not subject them to liability under state law, we understand that to be only another way of saying that the court disagrees with the content of federal law." *Howlett,* 496 U.S. at 379. A state policy that permits §1983 actions against some state employees for constitutional torts, but prohibits jurisdiction over other state employees for the same actions, "can be based only on the rationale that such persons should not be held liable for §1983 violations in the courts of the State." *Id.* at 380. That result is precisely what *Howlett* and the Supremacy Clause forbid.

ii. Correction Law §24 Discriminates Against §1983 Claims in Favor of Analogous State and Federal Claims.

The lower court in this case held: "New York does not discriminate against §1983 actions in favor of analogous state law claims because Correction Law §24 removes subject matter jurisdiction over any cause of action—state or federal—for money damages in state Supreme Court for conduct by DOCS employees." *Haywood v. Drown,* 9 N.Y.3d 481, 490 (2007). In so holding, the lower court interpreted *McKnett* as standing for the proposition that it is

permissible for states to refuse jurisdiction over a federal claim as long as they refuse jurisdiction over the exact same state claim against the exact same defendant. Such an interpretation is an ill-conceived attempt by the lower court to severely limit the purpose and effect of the Supremacy Clause and inconsistent with this Court's decisions in *McKnett*, 292 U.S. 230 and *Testa,* 330 U.S. 386.

In *McKnett*, the Court held that since the Alabama state courts had jurisdiction over similarly situated litigants and the same types of claims as those at issue in the *McKnett* case, the state court could not refuse to exercise jurisdiction solely because suit was brought under federal law. *McKnett,* 292 U.S. at 232-234. In *Testa*, the Court noted that since Rhode Island courts had jurisdiction to hear *similar* claims arising under Rhode Island law and claims for double damages arising out of the Fair Labor Standards Act, they had "adequate and appropriate jurisdiction" to hear a claim arising under the federal Emergency Price Control Act. *Testa*, 330 U.S. at 394. Thus, if the same *type* of claim "arising under state law, would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim." *Martinez,* 444 U.S. at 283-284 n. 7.

The Supreme Courts in New York State exercise jurisdiction over: 1) the same *type* of state claims as were raised in this case,[4] 2) the same *type*

[4] *Ott v. Barash*, 109 A.D.2d 254 (2d Dep't 1985) (plaintiff

of §1983 damage actions that were raised in this case against other state employees,[5] and 3) claims

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allowed to pursue action against state employee tort-feasor for negligence and intentional tort in the Supreme Court "even where the employee's tortious conduct was committed in the course of his employment"). *De Vivo v. Groshjean*, 48 A.D.2d 158 (3d Dep't 1975) (New York State indemnity statute does not deprive an injured plaintiff of his right to bring a cause of action against a negligent state officer or employee in state court). *See also Civil Practice Laws and Rules* (CPLR) Section 215 setting forth statute of limitations for intentional torts such as assault and battery.

[5] In New York State, an individual subjected to excessive use of force by a New York State employee, other than a DOCS employee, can file a lawsuit in supreme court for damages and can have his claim decided by a jury. *Prior v. County of Saratoga,* 245 A.D.2d 658 (3d Dep't 1977) (arrestee found to be prevailing party in state court action filed in supreme court alleging battery and civil rights claims against county for excessive use of force by officers in sheriff's department); *see also McCummings v. New York City Transit Authority,* 177 A.D.2d 24 (1st Dep't 1992) (jury awarded robbery suspect over $4.3 million after determining officer used excessive force); *Harvey v. Brandt,* 254 A.D.2d 718 (4th Dep't 1998) (arrestee filed §1983 action against police officer in supreme court, alleging excessive force); *Farley v. Town of Hamburg,* 34 A.D.3d 1294 (4th Dep't 2006) (plaintiff filed wrongful death action against police officer alleging assault and battery, negligence and violation of constitutional and civil rights); *Nelson v. Town of Glenville*, 220 A.D.2d 955 (3d Dep't 1995) (plaintiff, father of minor, sued town and individual police officers alleging false arrest and assault and battery).

arising under other similar federal statutes.[6] The New York Court of Claims exercises jurisdiction over cognate state claims.[7] *See Testa*, 330 U.S. at 394.

As demonstrated above, Correction Law §24 prohibits state courts from adjudicating a subset of §1983 claims while analogous state law claims are litigated in the Court of Claims and generically similar state law claims and §1983 claims against other state employees are regularly litigated in the state Supreme Courts. *See Testa,* 330 U.S. 386. Thus, New York has done exactly what *Howlett* and *Testa* forbid: "refus[ed] to entertain one discrete category of §1983 claims, when the court entertains similar state-law actions against state defendants,"

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[6] New York Courts have exercised jurisdiction over a multitude of federal statutes including, the American with Disabilities Act (ADA), *Meadows v. Flemings, Inc.*, 290 A.D. 2d 386, 387 (1st Dep't 2002); the Federal Employees Liability Act, (FELA), *Hairston v. Metro-North Commuter Railroad,* 259 A.D.2d 370 (1st Dep't 1999); the Emergency Price Control Act, *Egling v. Lombardo*, 181 Misc. 108 (N.Y. City Court, 1943); and the Internal Revenue Code, *Sands v. Weingrad*, 99 Misc. 2d 598 (Sup. Ct. N.Y. Co. 1979).

[7] The New York Court of Claims exercises jurisdiction over state tort claims, including *state* constitutional claims, *see e.g., Brown v. State of New York*, 89 N.Y.2d 172, 185 (1996), but "lack[s] jurisdiction to impose damages for a violation of the Federal Constitution." *Safran v. State of New York,* 2006-018-553, Claim Nos. 112556, 112611, Motion No. M-72239, *citing Zagarella v. State of New York*, 149 A.D.2d 503(1989); *Ferrick v. State of New York*, 198 A.D.2d 822 (1993); *De LaRosa v. State of New York*, 173 Misc. 2d 1007 (1997).

Howlett, 496 U.S. at 372, and other similar federal law actions, *Testa*, 330 U.S. at 394.[8] New York Supreme Courts "[are] fully competent to provide the remedies the federal statute requires." *Howlett*, 496 U.S. at 378. By failing to provide a forum in state court for this limited category of federal claims, New York discriminates against §1983 claims brought against DOCS employees thereby violating the dictates of *Howlett*.

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[8] In commenting on the application of *Howlett* to New York's Correction Law §24, Professor Steven Steinglass writes: "The most flagrant example of a state court system selectively excluding §1983 cases is the refusal of New York courts to entertain §1983 actions against state correctional officials. . . . The Supreme Court's decision in *Howlett* overrides New York policy of precluding suits against correctional officers. The state policy is based on a substantive judgment that the state, as contrasted to state employees, should be liable for certain wrongful acts; but this state policy is not a neutral rule of judicial administration. Moreover, the willingness of New York to entertain other §1983 suits against other state employees, implicates the suggestion in *Howlett* that a state that opens its courts to some §1983 suits may not bar other §1983 suits." Steven H. Steinglass, "An Introduction to State Court Section 1983 Litigation," p. 153, in *Sword and Shield: A Practical Approach to Section 1983 Litigation* (3d ed. ABA 2006*); see also,* Steven H. Steinglass, *Section 1983 Litigation in State Courts*, Ch. 15:15 n. 23 (Thomson West 2007).

iii. Correction Law §24 Does Not Implement a Neutral State Rule of Judicial Administration.

This Court has held that "[a] valid excuse may exist when a state court refuses jurisdiction because of a neutral state rule of judicial administration." *Howlett,* 496 U.S. at 357 *citing Douglas v. New York N.H. & H.R. Co.*, 279 U.S. 377, 387-389. A state acts neutrally in adopting rules of judicial administration if the rule does not discriminate between citizens of a state, *Douglas* at 387, if the rule limits the jurisdiction of certain state courts, *Herb v. Pitcarin*, 324 U.S. 117 (1945), or if the rule is one of *forum non conveniens* showing a preference for residents over non-residents, *State of Mo. ex. rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1 (1950).

This is not a case involving state courts of limited jurisdiction. *Kagen*, 21 N.Y.2d at 537. Nor is this a case involving the rule of *forum non conveniens*. This is a case where the statute at issue, Correction Law §24, discriminates between citizens of the state. Correction Law §24 does not seek to ensure that *all* New York State employees can do their jobs without fear of "vexatious or voluminous" lawsuits, it seeks only to protect DOCS employees from lawsuits for damages. Exempting one group of state employees from damage lawsuits in state court is not a neutral state rule of judicial administration but rather an attempt by the state to substitute its judgment for that of Congress as to which of its

residents should be subjected to a federal statute. This is not a valid excuse. *Howlett,* 496 U.S. at 372.

Defendants' assertion that the purpose of Correction Law §24 is to prevent meritless lawsuits against prison guards is also strikingly similar to the rationale asserted by the *amici curiae* in *Howlett*, a rationale that this Court summarily rejected:

> The argument by *amici* that suits predicated on federal law are more likely to be frivolous and have less of an entitlement to the State's limited judicial resources warrants little response. A State may adopt neutral procedural rules to discourage frivolous litigation of all kinds, as long as those rules are not pre-empted by a valid federal law. A State may not, however, relieve congestion in its courts by declaring a whole category of federal claims to be frivolous.

Howlett, 496 U.S. at 380.

iv. Defendants' Rationale For Correction Law §24 Does Not Square With Its Practical Effect.

Defendants argue that the rationale for Correction Law §24 is to permit correction officers to perform their jobs better by relieving them of the need to defend and appear as witnesses in lawsuits.

Notwithstanding Correction Law §24, correction officers can be sued and called as witnesses in federal court and in state court injunctive actions, and can be called as witnesses in state court actions filed in the Court of Claims. Thus, prohibiting the filing of a §1983 action in state court does nothing to limit a correction officer's exposure to lawsuits and does nothing to assist correction officers in their job performance.

Moreover, although the asserted rationale for the statute is to protect correction officers from suits by prisoners, the statute itself has a much broader effect—it prevents the filing of *any* damage claim against *any* DOCS employee. Thus, in *Gore v. Kuhlman*, 217 A.D.2d 890 (3d Dep't 1995), a DOCS employee's action against a Superintendent and Deputy Superintendent for harassment was held to be prohibited by Correction Law §24. And in *Woodward v. State*, 23 A.D. 3d 852 (3d Dep't 2005), when Mr. Woodward, a corrections counselor employed by DOCS, attempted to sue various DOCS employees for violations of his constitutional rights, his lawsuit was also dismissed pursuant to Correction Law §24. Neither Mr. Gore nor Mr. Woodward were inmates, but both were prevented from suing their supervisors because of Correction Law §24. Thus, another of the defendants' asserted rationales for the statute, to attempt to prevent "meritless prisoner suits" against corrections officers for damages so that they are better able to perform their jobs, does not have that effect (because of the

availability of the federal courts) and also has the effect of preventing suits by correctional employees or members of the general public against other agency personnel.[9]

III. CORRECTION LAW §24 BURDENS THE LITIGATION OF §1983 CLAIMS BY A SUBCLASS OF CIVIL RIGHTS VICTIMS BY LIMITING THE REMEDIES AVAILBLE IN STATE COURT, CREATING PROCEDURAL HURDLES AND DENYING A CHOICE OF FORUM.

In *Felder v. Casey*, 487 U.S. 131 (1988), this Court struck down a Wisconsin Notice of Claim

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[9] Even if this Court were to accept defendants' purported rationale for the enactment of Correction Law §24, the passage of the Prisoner Litigation Reform Act of 1995 and the equivalent New York State legislation, s*ee* CPLR 1101 (f), undercut the need for the purported protection offered by Correction Law §24. These federal and state legislative efforts to reduce prisoner litigation have been shown to be effective. Between 1995 and 2000, prisoner lawsuits decreased by 39%. Eugene Novikov, *Stacking The Deck: Futility and The Exhaustion Provision of the Prison Litigation Reform Act,* University of Pennsylvania Law Review (2008). John Scalia, *Prisoner Petitions Filed in U.S. District Courts, 2000, with Trends 1980-2000, Bureau of Justice Statistics: Special Report* (Bureau of Justice Statistics, U.S. Dep't of Justice, Wash. D.C.), Jan. 2002, at 1, available at http://www.ojp.usdoj.gov/bjs/pub/pdf/ppfusd00.pdf.

statute as preempted by federal civil rights actions. The Court found that "the application of the notice requirement burdens the exercise of the federal right by forcing civil rights victims who seek redress in state courts to comply with a requirement that is entirely absent from civil rights litigation in federal courts," and concluded that such a burden "is inconsistent in both design and effect with the compensatory aims of the federal civil rights laws." 487 U.S. at 141.

In analyzing whether a state rule limiting the enforcement in state court of a federal right is permissible, the Court focused on whether the rule was the natural or permissible consequence of an otherwise neutral, uniformly applicable state rule. In finding that it was not, the *Felder* Court concluded that the notice of claim rule was "imposed only upon a specific class of plaintiffs—those who sue governmental defendants—and, as we have seen, is firmly rooted in policies very much related to, and to a large extent directly contrary to, the substantive cause of action provided those plaintiffs." *Felder,* 487 U.S. at 145. Such a "burdening of a federal right," held the Court, could not stand. *Id*. In striking down the notice-of-claim requirement, the Supreme Court identified core principles of federalism:

> Congress entitled those deprived of their civil rights to recover full compensation from the governmental officials responsible for those deprivations. A state law that

> conditions that right of recovery upon compliance with a rule designed to minimize governmental liability, and that directs injured persons to seek redress in the first instance from the very targets of the federal legislation, is inconsistent in both purpose and effect with the remedial objectives of the federal civil rights law. Principles of federalism, as well as the Supremacy Clause, dictate that such a state law must give way to vindication of the federal right when that right is asserted in state court.

Felder, 487 U.S. at 153.

Correction Law §24 has a much more pervasive effect on the federal rights of a certain litigants—those who sue DOCS employees for money damages—than did the notice of claim requirement held impermissible in *Felder*. Correction Law §24, as it has been interpreted and applied by the courts, completely bars individuals—be they prisoners, other DOCS employees, or civilians—whose civil rights have been violated by DOCS employees, from bringing §1983 claims for damages against those employees in state court when the employees' actions were within the scope of their employment. *Haywood*, 9 N.Y.3d 481 (2007). Nor can those same victims bring a §1983 action in the Court of Claims because the state—the prescribed defendant in all Court of Claims actions—is not a person within the

meaning of the statute, *see Brown v. State of New York*, 89 N.Y.2d 172, 185 (1996), and because the Court of Claims will not entertain a federal claim.[10] *Cavanaugh v. Doherty*, 243 A.D.2d 92 (1998) (holding that the state Supreme Court, not the Court of Claims is the proper forum for an action under 42 U.S.C. §1983).

Correction Law §24 burdens the litigation of a federal claim by requiring that a subcategory of civil rights victims overcome procedural hurdles to the litigation of their claims[11] and contend with the ambiguous notion of determining whether the

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[10] Even if the conduct of DOCS employees could be the subject of a §1983 in the Court of Claims, the notice of claim requirements, which significantly shorten the limitations period for cases filed in the Court of Claims, would violate the Supreme Court's decision in *Felder v. Casey*, 487 U.S. 131 (1988).

[11] To obtain from the state courts the full relief to which any other victim of a civil rights violation is entitled, the victim of a civil rights violation by DOCS personnel must bring two suits in two different courts. To recover damages, he or she must sue in the Court of Claims, and to obtain injunctive or similar relief, the victim must bring a separate Article 78 proceeding or a state court §1983 proceeding. As the dissent in *Woodward* pointed out, "[n]ot only does this suggestion waste judicial resources, it demonstrates that Correction Law §24 indeed frustrates the purpose of the federal laws and burdens litigants' rights of recovery by creating obstacles to bringing such actions in state courts and requiring two separate actions in two different jurisdictions to obtain full recovery." *Woodward*, 23 A.D.3d at 857.

actionable conduct was within the "scope of employment"[12] rather than relying on the straightforward and more inclusive §1983 requirement that the defendant's conduct be "under color of state law." [13]

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[12] Correction Law §24 prohibits any civil action for damages against a DOCS employee if the conduct at issue was within the scope of employment. If a DOCS employee has engaged in actions outside of the scope of his employment, Correction Law §24 does not apply. Determining what actions constitute conduct "within the scope of employment" under Correction Law §24 is no easy task. Indeed, New York courts have had extreme difficulty coming to a consensus as to what type of conduct is "within the scope of employment" under Correction Law §24. *Compare e.g., Cepeda*, 128 A.D.2d 995 (3d Dep't 1987) (noting that the Court of Appeals in *Riviello v. Waldron*, 47 N.Y.2d 297 (1979) "instructed that an employee will be considered within the scope of his employment so long as he is discharging his duties, 'no matter how irregularly, or with what disregard of instructions,' " and finding that excessive use of force claim was within scope of employment); with *Murray v. Reif,* 36 A.D. 3d 1167 (3d Dep't 2007) (questioning the lower court's finding that the allegation that the defendant guard "assaulted plaintiff, threatened him, read his legal mail without permission, and importuned others not to feed plaintiff while he was in special housing" was clearly within scope of employment) and *Bouffard v. Lewis*, 139 Misc. 2d 786 (Sup. Ct. Alb. Co. 1988) (Kahn, J.) (holding that the allegation of excessive use of force was "certainly beyond the bounds of any recognized limits of employment.")

[13] There may be instances where the determination of whether conduct is under "color of law" is not so straightforward, but they are not likely to involve actions by correctional staff on the job.

These burdens are especially difficult for prisoners, the most likely plaintiffs in §1983 actions against DOCS employees, who usually lack the benefit of counsel and are more likely than the non-prison population to have limited literacy and reading comprehension.[14] Correction Law §24 burdens the litigation of federal claims by forcing uncounseled and often, uneducated, civil rights victims, to decide where they should file their case by guessing what actions a court might determine fall within the scope of employment, and where they guess wrong, risk having their claims dismissed.

Correction Law §24 burdens the litigation of a federal claim by denying a subclass of civil rights victims a choice of forum to which other civil rights

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[14] According to a national survey "[o]nly about a third of inmates are sufficiently literate to "make literal or synonymous matches between the text and information given in the [text], or to make . . . low-level inferences." Margo Schlanger, Inmate *Litigation*, 116 Harv. L. Rev. 1555, 1610 n. 161 (2003), *citing Nat'l Ctr. for Educ. Statistics, Pub. No. 1994-102, LITERACY BEHIND PRISON WALLS* 19 tbl.2.3 (Oct. 1994), available at http://nces.ed.gov/pubs94/94102.pdf (setting out literacy scores and defining the assessed levels of competence); for updated research, see, Greenberg, E., Dunleavy, E., and Kutner, M. (2007), *Literacy Behind Bars: Results From the 2003 National Assessment of Adult Literacy Prison Survey* (NCES 2007-473). U.S. Department of Education. Washington, DC: National Center for Education Statistics, at http://nces.ed.gov/pubs2007/2007473.pdf, site last visited 7/10/07.

victims are entitled. State and federal courts have concurrent jurisdiction over §1983 claims. *Allen v. McCurry*, 449 U.S. 90, 99 (1980), *citing Monroe v. Pape,* 365 U.S. 167, 183 (1961); *see also Thiboutot*, 448 U.S. 1*; Martinez,* 444 U.S. 277. Concurrent jurisdiction affords litigants a choice of forum, which "inevitably affects the scope of the substantive right to be vindicated before the chosen forum." *U.S. Bulk Carriers v. Arguelles,* 400 U.S 351, 359-360 (1971). The choice of forum is based on considerations such as the composition of the respective jury pools, the plaintiff's geographic location, the cost of litigation, including filing fees, the complexities of the applicable rules of civil procedure, access to counsel, and similar considerations.

Most civil rights plaintiffs have a choice of forum and can file their actions in either state or federal court. The victim of a DOCS employee who seeks to litigate his entire civil rights claim in one court and to receive all the relief available under §1983 in one action, however, can file his or her action only in federal court.

In some cases, Correction Law §24 not only burdens the litigation of a federal right but also can result in a complete denial of access to the courts. The three strikes provision of the Prison Litigation Reform Act (PLRA), 28 U.S.C. Section 1915(g), prohibits a prisoner from proceeding *in forma pauperis* in federal court unless the prisoner is "under imminent danger of serious physical injury" when the prisoner has brought three or more actions

in federal court that have been dismissed because they were frivolous, malicious or failed to state a cause of action.[15] *Id.* In upholding the provision's constitutionality, at least one court has relied in part on the availability of state courts to hear federal claims. In *Wilson v. Yaklich*, 148 F.3d 596, 605 (6th Cir. Ohio 1998), the court held as follows:

> Both as written and as applied in this case, § 1915(g) does not infringe upon the fundamental right of access to the

[15] Although the word "frivolous" tends to suggest cases that are irresponsibly motivated, its actual meaning is without "an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Many cases are dismissed as frivolous, and thus are treated as "strikes" under 28 U.S.C. Sec 1915(g), which amount to mistakes of law concerning technical doctrines by often unsophisticated litigants proceeding without counsel. For example, cases are routinely treated as strikes where prisoners have mistaken the line between the domain of Sec 1983 and that of habeas corpus. *See Bure v. Miami-Dade Police Dept., 2008 WL 2374149 at *3 (S.D.Fla., June 6, 2008);* Crawford v. Kershaw County DSS, 2007 WL 2934887 at *5 (D.S.C., Oct. 5, 2007); *Gattis v. Fuller*, 2007 WL 2156697 at *2 (D.S.C., July 26, 2007); *Wells v. Caskey*, 2006 WL 2805338 at *2 (S.D.Miss., Sept. 25, 2006); *Grant v. Sotelo*, 1998 WL 740826 at *1 (N.D.Tex., Oct. 17, 1998) (citing cases) (all holding § 1983 cases that should have been filed under habeas corpus are frivolous). This is a line that this Court has been struggling to define for decades, often reversing the judgments of learned appellate judges. *See, e.g., Wilkinson v. Dotson*, 544 U.S. 74 (2005); *Muhammad v. Close*, 540 U.S. 749 (2004) (per curiam); *Preiser v. Rodriguez*, 411 U.S. 475 (1973).

> courts. The plaintiff, despite being barred from bringing his present § 1983 claims in federal court as an indigent, still had available to him at the time of the initial filing the opportunity to litigate his federal constitutional causes of action in forma pauperis in state court. *See Patsy v. Board of Regents of Florida, 457 U.S. 496, 506-07, 73 L. Ed. 2d 172, 102 S. Ct. 2557 (1982).* As long as a judicial forum is available to a litigant, it cannot be said that the right of access to the courts has been denied. *Hampton, 106 F.3d at 1285.*

Correction Law §24 denies *any* judicial forum to a New York prisoner who is indigent and has had the requisite three dismissals, since he cannot file in federal court without prepaying the filing fee regardless of the merit of his claim, and cannot proceed under §1983 in state court. Thus he is denied access to courts in the most literal sense.

A. The Availability of the Court of Claims Does Nothing to Lessen the Burden on the Litigation of the Underlying Federal Claim.

Although the Court of Claims cannot entertain a §1983 federal claim, it does allow some civil rights victims to seek a tort remedy for wrongs done to them by DOCS employees, if there is a state

law claim for their injury. But statutory restrictions prevent the Court of Claims from providing the same procedural rights and remedies that state and federal courts provide in §1983 actions. These statutory restrictions burden the litigation of the underlying federal claim. The Court of Claims cannot award compensatory damages against an individual, cannot award punitive damages, does not provide a jury trial and cannot award attorneys' fees.

Section 1983 states that "every person" who under color of state law subjects another person to a violation of federal rights "shall be liable to the party injured in an action at law." Imposing personal liability for such injury implements core values embodied in our Constitution and sends a clear and vital message to anyone who would violate, under color of state law, the constitutional rights of another. Holding the culpable accountable is the irreducible purpose of Section 1983 and the states may not substitute their own policy choices for that purpose.[16]

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[16] This point is far from formalistic. A judicial finding that an identified person has to pay damages for violating the constitutional rights of another person carries with it a stigma that highlights the reprehensibility of the wrongdoer's conduct as well as the significance of the rights involved. The statute at issue leaves certain victims of abuse of their federal rights without a remedy under state law against the individual wrong-doer. When a damage award is issued against an agency, the individual stigma is lost. Although there are cases

Punitive damages also serve a recognized purpose in §1983 litigation. "[T]he purpose of punitive damages is to punish the defendant and to deter him and others from similar conduct in the future." *Vasbinder v. Scott*, 976 F.2d 118, 121 (2d Cir.1992). By prohibiting a civil rights victim of a DOCS employee from obtaining punitive damages in state court from the individual who has violated his federal constitutional rights while allowing an award of such damages in other similar state law claims, Correction Law §24 burdens "one discrete category of §1983 claims." *Howlett*, 496 U.S. at 372; *see also Testa*, 330 U.S. 386.

In addition, in a §1983 action, in a New York state or federal court, a plaintiff has a right to a jury trial.[17] Congress has also authorized the award of attorneys fees to the prevailing party in a §1983 action. 42 U.S.C. §1988(b). Correction Law §24 mandates that any damage claim against a DOCS employee be pursued in the Court of Claims where there are no juries and no right to an award of

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where the state may chose to indemnify a DOCS employee after there is a finding of wrongdoing, the stigma of a finding of culpability in a public forum, accompanied by an order to pay damages is still present. Indeed, often the public is unaware of the indemnification.

[17]Plaintiffs in §1983 actions in state supreme court are afforded a trial by jury. *Barone v. City of Mount Vernon*, 170 A.D. 2d 557 (2d Dep't 1991).

attorneys fees.[18] *McKinney's Court of Claims Act* §12(3) and §27. By preventing civil rights victims of DOCS employees from suing in state Supreme Court where they could have a jury trial and, if successful, an award of attorneys fees, Correction Law §24 deliberately burdens a subclass of claims that were intended by Congress to be protected under §1983.

It is no answer to say that litigants who do not wish to bear these burdens in state court may resort to federal court, since the supremacy clause *obliges* state courts to lend themselves to the litigation of federal claims *without burdening the litigation of the federal claim*. If this argument provided a defense, then *McKnett*, *Testa* and *Howlett* would have been decided differently.

IV. CORRECTION LAW §24 UNDERMINES FIRMLY ESTABLISHED PRINCIPLES OF FEDERALSIM.

Today our system of judicial federalism allows citizens to seek vindication of their constitutional rights in either federal or state court. When this nation was originally founded, however, the state

[18] The lack of availability of attorneys fees makes it extremely difficult for inmates to obtain counsel even in the most meritorious cases. This, coupled with the difficulty uncounseled litigants have in determining what action is considered "within the scope of employment" further burdens the ability of these civil rights victims to litigate a federal claim.

courts were the primary adjudicators of federal question cases.[19] As discussed in The Federalist, No. 82:

> [I]n every case in which [state courts] were not expressly excluded by the future acts of the national legislature, they will of course take cognizance of the causes to which those acts may give birth.... [T]he inference seems to be conclusive that the state courts would have a concurrent jurisdiction in all cases arising under the laws of the union, where it was not expressly prohibited.

The Federalist No. 82, p. 555 (J. Cooke ed. 1961) (A. Hamilton)

It was not until 1875, when general federal question jurisdiction was established, that litigants

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[19] At the formation of the American republic, it was widely understood that state courts were to play an important role in the interpretation of federal and constitutional law. Indeed, until 1875, the "inferior Courts" contemplated in Article III had no general jurisdiction to hear federal question cases; the task of interpreting federal and constitutional law thus fell largely to state courts, subject only to final review by the United States Supreme Court established by section 25 of the first Judiciary Act and affirmed by the Supreme Court in *Martin v. Hunter's Lessee*. Brett Christoper Gerry, *Parity Revisited: An Empirical Comparison of State and Lower Federal Court Interpretations of Nollan v. California Coastal Commission,* Harvard Journal of Law and Public Policy (1999) (citations omitted).

in federal question cases could choose to file in either federal or state court in federal question cases. In *Robb v. Connolly*, 111 U.S. 624 (1884), this Court clarified that the creation of federal question jurisdiction did not, however, divest the state courts of their jurisdiction over federal claims: "Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States." *Id.* at 637.

In 1990, this Court reiterated the vital role that state courts play in interpreting and enforcing the Federal Constitution stating as follows:

> [U]nder our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause. Under this system of dual sovereignty, we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States.

Tafflin v. Levitt, 493 U.S. 455, 458 (1990). Thus, it is generally understood that, unless preempted, state courts have concurrent and necessary jurisdiction over all federal statutes and laws.

Constitutional claims of prisoners account for a significant amount of the federal courts' docket.

New York State is abdicating its responsibility to address those claims by prohibiting their filing in state court. Correction Law §24 violates core principles of federalism by largely ousting New York state courts from analyzing federal constitutional issues that arise from the operations of the state prison system. *Thiboutot*, 448 U.S. 1.

V. THE CLEAR INTENT OF CORRECTION LAW §24 IS TO IMMUNIZE NEW YORK STATE DOCS EMPLOYEES.

Though the New York Court of Appeals concluded that Correction Law §24 is a jurisdictional rule, the dissent was correct in concluding that Correction Law §24 is nothing more than a statute designed to immunize DOCS employees, and as such, clearly violates the Supremacy Clause. *Haywood v. Drown*, 9 N.Y.3d 481,500 (2008).

In *Martinez*, this Court reasoned:

> A construction of the federal statute which permitted a state immunity defense to have a controlling effect would transmute a basic guarantee into an illusory promise; and the Supremacy Clause of the Constitution insures that the proper construction may be enforced. . . . The immunity claim raises a question of federal law.

Martinez, 444 U.S. 277, 284 n.8 , *quoting Hampton v. Chicago,* 484 F. 2d 602, 607 (7th Cir. 1973). Ten years later, this Court reaffirmed its position, stating that "a State cannot immunize an official from liability for injuries compensable under federal law." *Howlett,* 496 U.S. at 377.

Unlike true jurisdictional provisions, which funnel certain types of cases to particular forums, the statute at issue here forecloses all §1983 cases for damages against DOCS employees in state court.[20] As Judge Jones stated in his dissent in this case:

> [I]f you strip away the veneer of the majority's arguments, section 24, a statute which, on its face, precludes anyone, including other DOCS employees and prisoners, from bringing damages claims against DOCS personnel - - is not a *neutral* jurisdictional barrier to a particular type of claim.
>
> In reality, section 24 functions as an immunity statute that allows state courts to selectively exclude prisoner suits for damages against DOCS personnel.

Haywood, 9 N.Y.3d at 500.

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[20] Although the state Court of Claims is available to victims of civil rights violations by DOCS employees, that court does not have jurisdiction over individual prison employees.

In *Howlett*, 496 U.S. 377, this Court held that "[f]ederal law makes governmental defendants that are not arms of the State, such as municipalities, liable for their constitutional violations." Like the state law at issue in the *Howlett* case, Correction Law §24 confers absolute immunity for constitutional torts on a subgroup of such defendants, DOCS employees.

CONCLUSION

Whether the Court concludes that Correction Law §24 is an attempt to limit the jurisdiction of New York's state courts or confer immunity upon a select group of state employees, the statute runs afoul of the principles so clearly articulated in *Howlett*, *See* 496 U.S. at 375. New York State has chosen to constitute Supreme Courts of general jurisdiction and to exercise jurisdiction over federal claims, including §1983 actions by private citizens against state employees. New York's state courts are fully competent to provide the remedies provided by the federal statute. *Id.* at 378-379. New York State cannot substitute its policies for those of Congress. The defendants' purported rationale for Correction Law §24 does not constitute a valid excuse or neutral reason as defined by this Court. Correction Law §24 burdens the litigation of a federal claim and undermines firmly established principles of federalism. For these reasons, and to ensure that other states do not attempt an end-run around this

Court's clear direction that the Supremacy Clause prohibits states from enacting statutes that undermine or defeat rights created by federal statutes, this Court should reverse the lower court decision.

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Respectfully submitted,

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